1. D.B. CIVIL SPECIAL APPEAL NO.48/2004
(Kavji and anr. V/s Natwar and ors.)

2. D.B. Civil Special Appeal No.43/2004
(Gomna and ors. V/s Natwar and ors.)

16.1.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P.VYAS

Mr.P.R.Mehta, for the petitioner/s.
Mr. Mahendra Trivedi, } for respondents
Mr. Jagdisy Vyas, }

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At the request of learned counsel for the parties, the preparation of paper book is dispensed with and the appeals are heard on merits.

The short issue is raised that an accident took place on 1.5.1996 in which two girls belonging to Scheduled Caste aged 17 and 18 years died. Two claim petitions were filed by the respective parents of the deceased girls and in each case an exaggerated claim of Rs. 15,00,000/- was filed by way of loss of earning and life. The claim of Rs. 2,00,000/- was made for mental agony and Rs.5000 for funeral expenditure. In all total a sum of Rs.18,05,000/- was made.

The learned Motor Accident claims Tribunal vide common judgment and award dtd.30.5.2002 awarded the compensation for a sum of Rs.60,400/- in each case. The Tribunal accepted the plea that the girl was earning a sum of Rs.1,000/- per month and by reducing 1/3rd of the income spent on the deceased herself, applied multiplier of six.

Aggrieved with the award, two separate appeals were filed challenging the award. The learned Single Judge dismissed both the appeals by common order dtd.5.9.2003 distinguishing the decision rendered in Brijmohan's case (1989 (2) TAC 59) inter alia on the ground that in Brij Mohan's case, the deceased was college going student and was not earning anything.

Going through the award of the Motor Accident Claims' Tribunal and the judgment under appeal, we are of the opinion that the award draws a distinction in male and female victims dying in the accident, whereas the law does not make out any such distinction on the ground of gender alone in

determining the compensation to be determined in cases of death caused on account of accident, whether male or female. Since other findings have not been challenged, we are not going in detail of other findings, namely, that the accident took place on 1.5.1996, it took place on account of negligent driving by the driver of the dumper, about the age of the deceased and the deceased earning Rs.1,000/- by way of wages per month.

The compensation formula applied in the case of death of the victim varies from case to case and it reveals common thread that it is primarily to evaluate net value of the deceased in monetary terms of his earning capacity akin to determine value of the property based on the letting value. The second Schedule appended to the Motor Vehicles Act since Nov., 1994 is only to provide rough and ready formula and in case the parties are not willing to lead evidence on variable multiplier to arrive at exact figure, in that event it can be applied on option of the claimant whose claim is founded on their annual income falling below Rs.40,000/-.

Be that as it may, in determining the compensation gender of victim cannot have over-riding effect. It is not in dispute that if the deceased in like circumstances would have been male, the compensation which would have been awarded would have been much higher than what has been awarded in the cases of death of two girls in the present case.

Taking clue from the schedule in the case of non-earning members, the annual income is taken at Rs.15,000/- and for the persons aged 15 – 20 years, the multiplier applied is 6. In case the annual income is taken as Rs.12,000/- which is accepted by the learned tribunal, the compensation would have been Rs.2,28,000 and the compensation which has been awarded in the case of deceased being female shows gross inadequacy of the compensation awarded which cannot be allowed to be sustained.

The learned counsel for the respondent has urged that in case of such young death, the age of the parents also becomes relevant factor in applying the multiplier and also the fact that female member

sooner or later might become the member of other family may also effect the ultimate determination of compensation to some value. This adjustment also cannot be said to be irrelevant.

Looking to the totality of the circumstances, we deem it just and proper that in each case, compensation is enhanced from Rs.60,400/- to Rs.1,60,000/-. On the enhanced amount, interest @9% shall be payable from the date of award passed by Motor Accident Claims Tribunal. Both the appeals are allowed accordingly.

(R.P.VYAS)J (RAJESH BALIA)J.

SS/-